

INTRODUCTION

SPECIALIZED COURTS: THE LEGISLATIVE RESPONSE

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This edition of the *American University Law Review* demonstrates the broad jurisdiction of the United States Court of Appeals for the Federal Circuit. These articles cover substantive legal issues in the areas of tax, international trade, intellectual property, federal personnel, and federal procurement. Yet these articles do not cover all of the vital areas of the Federal Circuit's jurisdiction. The Federal Circuit's enabling legislation also gives appellate jurisdiction over fifth amendment takings claims, military review cases, Indian claims, and other Tucker Act¹ cases.

In light of the Federal Circuit's broad jurisdiction, few remember that opponents of its creation charged that it was a specialized court. Thus, the Federal Circuit provides a convenient model with which to examine congressional response to specialized courts. This article briefly revisits the creation of the Federal Circuit and examines

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1. 28 U.S.C. § 1346 (1988).

Congress' pattern of committing specialized jurisdiction to article I courts.

I. THE FEDERAL CIRCUIT: CREATION OF A "SPECIALIZED" COURT?

Throughout the development of the legislation which eventually gave birth to the United States Court of Appeals for the Federal Circuit, naysayers assailed the various bills. Antagonists charged that the proposed court would be a specialized court—a court dedicated primarily to the detailed field of patent law. Other critics, seizing on this idea, charged that the creation of one specialized subject matter court would undoubtedly lead to the establishment of more article III specialty courts. Still other critics contended that "specialized" courts breed a multitude of ills which frustrate the aims of a generalized judiciary.

Senator Max Baucus (D. Montana), sought to squelch the Federal Circuit before its inception, stating that its enabling legislation "creates a centralized specialty court."² For Senator Baucus, the principal issue was "whether Congress should attempt first to address such problems [in the patent system] by creating a centralized specialty court or whether there are other avenues available, that do not have the severe negative consequences presented by a specialized court."³

Senator Baucus and others advocated, as an alternative to creation of the Federal Circuit, legislation to resolve proven and potential ambiguities in patent law. Senator Baucus stated:

It is ironic that many of those in the Senate who are so concerned about judicial activism would support an approach that creates a new court first, rather than attempting to give the existing courts better direction.⁴

While he admitted a "greater need for clarity and uniformity in patent law,"⁵ Senator Baucus opined that the creation of the Federal Circuit was simply an example of Congress' "passing the buck" to a new forum instead of clarifying patent law.⁶

Senator Alan K. Simpson (R. Wyoming) disapproved of the proposal to vest the Federal Circuit with subject matter jurisdiction over particular legal fields. Senator Simpson argued against specialization. He feared the new court would necessarily sacrifice the "di-

2. 127 CONG. REC. 29,862 (1981).

3. *Id.*

4. *Id.*

5. *Id.* at 29,861.

6. S. REP. NO. 275, 97th Cong., 1st Sess. 40-41 (1981). Senator Baucus doubted that a specialized court would remove the ambiguity from a substantive area of law. *Id.*

versity of opinion stemming from divergent points of view and sometimes differing strains of geographical philosophy and thought.”⁷ This argument is the primary criticism of specialized courts in general. In addition, Senator Simpson charged that the Federal Circuit’s central location would require all litigants to take their cases to distant Washington, D.C.⁸

The Federal Circuit’s opponents also feared that the new court would set the stage for creation of many other “specialty” courts. Senator Baucus believed the Federal Circuit would “undermine the status of existing regional circuits” and would “lead to a proliferation of Federal specialty courts” in Washington, D.C.⁹ Representative F. James Sensenbrenner, Jr. (R. Wisconsin) argued on the House floor that the new court:

is not going to do much to alleviate the caseload in our Federal appellate system, and attacks the problem of inconsistent Federal appellate decisions on a piecemeal basis rather than a national basis.¹⁰

Representative Sensenbrenner complained that Congress could not adopt every proposal to create a specialized court. To do so would result in, as Senator Baucus noted, “a legal system fractured into substantive areas with a set of special judges for each area.”¹¹ He preferred a legal system of “generalist judges who can bring their broad experience and background to each body of the law.”¹²

The American Bar Association (ABA) passed a resolution opposing the creation of the Federal Circuit. The opponents of the new court repeatedly referred to the ABA as their ally. Indeed, the ABA had written letters invoking the Hruska Commission’s¹³ criticism of specialized courts.¹⁴ The Commission concluded that specialized courts “would not be a desirable solution either to the problems of the national law or . . . to the problems of regional court caseloads.”¹⁵ The Commission’s second report stated:

7. 127 CONG. REC. 29,888 (1981).

8. *Id.*

9. S. REP. NO. 275, 97th Cong., 1st Sess. 40 (1981).

10. 127 CONG. REC. 27,794 (1981).

11. *Id.* at 29,862.

12. *Id.*

13. COMMISSION ON REVISION OF THE FEDERAL COURT APPELLATE SYSTEM, STRUCTURE AND INTERNAL PROCEDURES: RECOMMENDATIONS FOR CHANGE, *reprinted in* 67 F.R.D. 195 (1975) [hereinafter Hruska Commission].

14. *Federal Courts Improvement Act of 1981: Hearings on S. 21 Before the Subcomm. on Courts of the Senate Comm. on the Judiciary*, 97th Cong., 1st Sess. 190-97 (1981) (statement of Herbert E. Hoffman, Director, American Bar Association, Washington, D.C.) (submitting letter from ABA and excerpt from Hruska Commission during testimony).

15. Hruska Commission, 67 F.R.D. at 234. The Commission preferred the formation of a National Court of Appeals. *Id.* at 246. The proposed court’s jurisdiction would have been

[G]iving a national court exclusive jurisdiction over appeals in a category of cases now heard by the circuit courts would tend to dilute or eliminate regional influence in the decision of those cases. Our nation is not yet so homogeneous that the diversity of our peoples cannot be reflected to some advantage in the decisions of the regional courts. Excluding these courts from consideration of particular categories of cases would also contract the breadth of experience and knowledge which the circuit judges would bring to bear on other cases; the advantages of decision-making by generalist judges diminish as the judges' exposure to various areas of law is lessened.¹⁶

Congressional sources attacked the legislative proposal for the Federal Circuit, painting this reform effort as short-sighted, indirect, insensitive, and wasteful. Overall, the Federal Circuit concept was criticized for attempting to create a "specialized" court. A specialized court would, in the opponents' view: 1) fracture subject areas of law and deprive them of the virtues of cross pollination; 2) place all venue in one distant court; 3) risk capture of a court by one class of litigants or viewpoint; and 4) generally inhibit the orderly common law development of American jurisprudence.

II. CONTEMPORANEOUS RESPONSES TO THE ANTAGONISTS

During the debate on the Federal Courts Improvement Act of 1982 (the Act), legislators and experts refuted the proposed court's critics. While acknowledging the dangers of specialized courts, the Federal Circuit's proponents saw no specialization in its jurisdiction. For example, Judge Howard Markey, then Chief Judge of the Court of Customs and Patent Appeals (CCPA), argued in his testimony before the Courts Subcommittee that merger of the Court of Claims and the CCPA would actually reduce specialization in the courts:

The Court of Appeals for the Federal Circuit is obviously less specialized, whatever that word means, than either of the two courts it consolidates by definition since, as the Chair knows, we will continue all of our present jurisdiction plus.¹⁷

Chief Judge Markey also rebutted the charge that the creation of the Federal Circuit would lead to creation of courts with exclusive subject matter jurisdictions:

I suggest, Mr. Chairman, that Congress can be trusted to decide

limited to those cases referred to it by the Supreme Court or transferred from other courts of appeals. *Id.* at 239-43 (outlining proposed reference and transfer jurisdiction).

16. *Id.* at 235.

17. *Federal Courts Improvement Act of 1981: Hearings on S. 21 Before the Subcomm. on Courts of the Senate Comm. on the Judiciary*, 97th Cong., 1st Sess. 246 (1981) (statement of Howard T. Markey, Chief Judge, United States Court of Customs and Patent Appeals).

those issues when and if they arise on their merits, as was recognized and done on this bill.

Tax, environmental, and trademark matters were originally included. Congress in its wisdom eliminated those three items.

If in the future Congress should decide, or if it is proposed to Congress that other fields be added, Congress is perfectly willing to handle that matter when and if it comes up, and anyone having objections to those additions would certainly be heard.¹⁸

Senator Patrick Leahy (D. Vermont) agreed that the Federal Circuit would not engender any new specialty courts.¹⁹ Senator Robert Dole (R. Kansas) argued that “[c]ritics have . . . claimed that we are creating a specialized court without noting that the new court of appeals is less specialized than the court it replaces.”²⁰

Senator Strom Thurmond (R. S. Carolina) also disputed the application of the term “specialized” to the Federal Circuit since the court would have jurisdiction over a variety of cases. He acknowledged that the Federal Circuit would have exclusive jurisdiction in patent cases appealed from district courts. He further noted that “[t]he creation of this appellate structure will eventually lead to uniformity in this very important and specialized field of law.”²¹ Thus, Senator Thurmond did not believe funneling all patent appeals to a single appellate court would specialize that court. He emphasized the merits of placing patent appeals in a court with other broad areas of jurisdiction.

Several members of Congress also defended the Federal Circuit from charges of specialization. Representative Robert W. Kastenmeier (D. Wisconsin) argued that the jurisdiction given the Federal Circuit “firmly respects present-day conceptions of judicial administration: That we ought not create overly specialized courts.”²² In support of his argument that this is not a specialized court, Representative Kastenmeier stated:

18. *Id.* at 248-49.

19. S. REP. NO. 275, 97th Cong., 1st Sess. 39 (1981). Senator Leahy stated:

In patent cases, the court is almost always dealing with claims of innovation and weighing one body of technical evidence against another. In nearly all other litigation, science and technology, when relevant, are related to other human or social issues, and only a generalist court should ever hear such matters.

Id.

20. 127 CONG. REC. 29,860 (1981). One commentator notes that the jurisdiction of the Federal Circuit is necessarily broader than that of the two courts which were consolidated to form this court, but nonetheless concedes that the Federal Circuit avoids the label “specialist” by virtue of the fact that it specializes in several areas of law. Sward & Page, *The Federal Courts Improvement Act: A Practitioner's Perspective*, 33 AM. U.L. REV. 355, 397 (1984).

21. 127 CONG. REC. 29,861 (1981).

22. 126 CONG. REC. 25,364 (1980). Representative Carlos J. Moorhead (R. Calif.) supported the creation of the Federal Circuit on the same basis. *Id.* at 25,366.

[w]hat we have done is . . . combine [the Court of Claims and the CCPA] into a larger, more generalized court. In addition, the court has enlarged jurisdiction over all Federal contract appeals in which the United States is a defendant, over patent and trademark appeals from all Federal district courts, and over appeals from the Merit Systems Protection Board.²³

Representative Rodino (D. New Jersey) recognized and sought to promulgate the efficiency inherent in the formation of the Federal Circuit. He stated that the structural reform of creating the Federal Circuit "will markedly reduce the specialization of two existing courts, reduce the total number of Federal courts, and add to the capacity of our system by making optimum use of existing resources. No new courts or judgeships are created; no additional personnel are required."²⁴

Mr. Donald R. Dunner, former President of the American Patent Law Association and Consultant to the Hruska Commission, took the sting out of the Commission's criticisms of specialized courts. He stated that "the proposed CAFC is totally different from anything considered by the Hruska Commission . . ."²⁵ The Hruska Commission did not consider or reject a general article III appellate court with exclusive jurisdiction over patent appeals as part of a much broader jurisdiction. Rather, the Commission discredited single issue courts or courts with one type of case.

Committee reports stated that the Federal Circuit would not be a "specialized court:"

[T]he new court [has] a breadth of jurisdiction that rivals in its variety that of the regional courts of appeals. The proposed new court is not a "specialized court." Its jurisdiction is not limited to one type of case, or even to two or three types of cases. Rather, it has a varied docket spanning a broad range of legal issues and types of cases. It will handle all patent appeals and some agency appeals, as well as all other matters that are now considered by the CCPA or the Court of Claims. The Court of Claims decides cases involving federal contracts, civil tax issues if the government is the defendant, Indian claims, military and civilian pay disputes, patents, inverse condemnation, and various other matters. The CCPA decides patent and customs cases from several sources, and those cases often include allegations of defenses of "misuse,

23. *Id.* at 25,364.

24. *Id.* at 25,367.

25. S. REP. NO. 275, 97th Cong., 1st Sess. 35 (1981) (reprinting letter to Hon. Robert Kastenmeier, Chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, Committee on the Judiciary, United States House of Representatives, Washington, D.C. re H.R. 2405, 97th Cong., 1st Sess. (1981)).

fraud, inequitable conduct, violation of the antitrust laws, breach of trade secret agreements, unfair competition, and such common law claims as unjust enrichment."²⁶

Ultimately, the Federal Circuit's jurisdictional statute²⁷ itself rejected criticisms about a specialized or restricted court in terms of breadth of subject matter. The Act adheres to the philosophy of its predecessor bills and represents "a sensible accommodation of the usual preference for generalist judges and the selective benefit of expertise in highly specialized and technical areas."²⁸

III. COURTS OF LIMITED JURISDICTION

In light of Congress' role in the creation of other courts, including courts with a single issue or type of cases, the Federal Circuit should not have been portrayed as a specialized court in legislative debates. When Congress wants to create a specialized court or to vest specific subject matter jurisdiction in one court, it has done

26. H.R. REP. NO. 312, 97th Cong., 1st Sess. 19 (1981) (citations omitted) (Report to accompany H.R. 4482, 97th Cong., 1st Sess. (1981) the Court of Appeals for the Federal Circuit Act of 1981).

27. Section 1295 of Title 28 gives exclusive jurisdiction to the Federal Circuit over:

- 1) § 1338 appeals from any district court (arising under any Act of Congress relating to patents, plant variety protection, copyrights and trade-marks (28 U.S.C. § 1338(a) (1989)));
- 2) § 1346 appeals (Little Tucker Act) from any district court;
- 3) appeals from the United States Claims Court;
- 4) appeals from—
 - A) the Board of Patent Appeals and Interferences of the Patent and Trademark Office with respect to patent applications and interferences . . .
 - B) the Commissioner of Patents and Trademarks or the Trademark Trial and Appeals Board with respect to applications for registration of marks and other proceedings as provided in section 21 of the Trademark Act of 1946 (15 U.S.C. § 1071); or
 - C) a district court decision of a civil action to obtain patents or civil interference action (35 U.S.C. §§ 145, 146);
- 5) appeals from the United States Court of International Trade;
- 6) appeals from final determinations of the United States International Trade Commission relating to unfair practices in import trade, made under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337);
- 7) appeals of questions of law as to findings of the Secretary of Commerce on the importation of instruments or apparatus;
- 8) appeals under section 71 of the Plant Protection Act (7 U.S.C. § 2461);
- 9) appeals from final orders and decisions of the Merit Systems Protection Board; and
- 10) appeals from final decisions of an agency board of contract appeals or similar appeals in which the department or agency head has determined that the decision is not entitled to finality.

28 U.S.C. § 1295(a)(1)-(10) (1989). Section 1292 of Title 28 gives the Federal Circuit jurisdiction over certain interlocutory appeals. 28 U.S.C. § 1292 (1989). This multi-headed jurisdiction is not contiguous with a claim that this is a "specialized" (one-issue or limited issue) court.

28. *Federal Courts Improvement Act of 1979: Hearings on S. 677 and S. 678 Before the Subcomm. on Improvements in Judicial Machinery of the Comm. on the Judiciary*, 96th Cong., 1st Sess. 26 (1979) (statement of Judge Jon O. Newman).

so.²⁹ It has sometimes simply vested exclusive jurisdiction in one of the United States courts of appeals.³⁰ Other times, Congress has created a new, single issue court with exclusive subject matter jurisdiction in a specialized area.

Congress has power to create courts either under article I or article III of the Constitution. Article III, section 1 provides:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.³¹

Article I, section 8, clause 9 states that Congress shall have power "[t]o constitute Tribunals inferior to the supreme Court."³² As early as *American Insurance Co. v. Canter*,³³ the Supreme Court has recognized Congress' power to create article I courts.³⁴

When allocating a single subject matter to a new court, Congress has often created an article I court.³⁵ For example, Congress cre-

29. Plager, *The United States Courts of Appeals, The Federal Circuit, and the Non-Regional Subject Matter Concept: Reflections On the Search for a Model*, 39 AM. U.L. REV. 853 (1990) provides an enlightening exposition on the benefits of non-regional subject matter courts in alleviating present burdens on the federal appellate system.

30. Exclusive jurisdiction to review certain Environmental Protection Agency orders under the Clean Air Act has been vested in the United States Court of Appeals for the District of Columbia. 42 U.S.C. § 7607(b)(1) (1989). Likewise, review of certain orders of the Federal Communications Commission rests exclusively with the District of Columbia Circuit. 47 U.S.C. § 402(b) (1989); see *Telecommunications Research & Action Center v. Federal Communications Comm'n*, 750 F.2d 70, 75 n.26 (D.C. Cir. 1984).

31. U.S. CONST. art. III, § 1.

32. U.S. CONST. art. I, § 8, cl. 9.

33. 26 U.S. (1 Pet.) 511 (1828).

34. *Id.* at 546. Scholars have long debated whether a court whose judges do not receive protection of tenure and salary guaranteed by article III is a "constitutional" or "legislative" court. See *Ex Parte Bakelite Corp.*, 279 U.S. 438, 460 (1929) (finding Court of Customs Appeals to be legislative rather than constitutional court); 13 C. WRIGHT, A. MILLER & E. COOPER, *FEDERAL PRACTICE AND PROCEDURE*, § 3528 (2d ed. 1984) (examining historical development of basis for lower court jurisdiction in light of article III tenure and salary requirements). Justice Van Devanter stated in *Bakelite* that the true test "lies in the power under which the court was created and in the jurisdiction conferred." *Bakelite*, 279 U.S. at 459. Other courts have held that judicial power cannot be exercised at all by courts whose judges lack the security of tenure and compensation. See *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59-60 (1982).

35. Often the constitutional nature of the court itself has been debated. In the 1950s, Congress statutorily declared that the Court of Claims, the Customs Court and the Court of Customs and Patent Appeals were article III courts. Congress deemed this necessary in light of case law determinations that these courts were article I courts. Subsequently, Congress determined the Claims Court to be an article I court (28 U.S.C. § 171), and the Customs Court and the Court of Customs and Patent Appeals to be article III courts. See Act of June 25, 1948, ch. 646, 62 Stat. 899, *repealed by* Pub. L. No. 97-164, title I, § 106, 96 Stat. 28 (1982); see also 28 U.S.C. § 251 (1982).

ated under article I the Court of Private Land Claims to hear and determine claims founded on Spanish or Mexican grants embracing lands ceded by Mexico to the United States. Initially, Congress entrusted the preliminary inquiry of entitlement to the land to executive officers. Congress required that the officers make reports upon which Congress could then base the ultimate entitlement determination. Later, in 1891, Congress created the court to examine and adjudicate claims between claimants and the United States.³⁶

Congress again exercised its article I powers in 1902 by creating the Choctaw and Chickasaw Citizenship Court as a legislative court.³⁷ Congress created this court to determine controverted claims to membership in the two Indian tribes.³⁸ Tribal membership affected a claimant's right to previously allocated lands and funds.

Congress again used article I to create the Tax Court with the single-subject jurisdiction of the Internal Revenue Code.³⁹ In addition, in 1926, Congress created the United States Customs Court under its article I authority to review acts of appraisers and collectors in valuing and classifying imports and in liquidating and collecting customs duties.⁴⁰ This article I body later became an article III court. In 1956, Congress recommissioned the Customs Court under article III. In 1980, Congress changed the name of the Customs Court to the Court of International Trade.⁴¹

Not all article I courts are single issue fora, however. The United States Claims Court, created in 1982 to handle the trial jurisdiction of the Court of Claims, has a broad jurisdiction, including the Tucker Act.⁴² This jurisdiction encompasses tax, contract, government employee pay, constitutional takings, and:

Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the

36. 26 Stat. 854, c. 539 (March 3, 1891); *see also Bakelite*, 279 U.S. at 456 (examining history of many legislative courts).

37. *Bakelite*, 279 U.S. at 457 (citing *Wallace v. Adams*, 204 U.S. 415 (1907)).

38. 32 Stat. 641, c. 1362 (July 1, 1902); *see also Wallace v. Adams*, 204 U.S. 415, 425 (1907) (holding creation of Choctaw and Chickasaw Citizenship Court was valid exercise of congressional power).

39. 26 U.S.C. § 7441 (1989).

40. *Bakelite*, 279 U.S. at 457. The Customs Court was formerly the Board of General Appraisers.

41. Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727 (1980); *see also* 28 U.S.C. § 1581 (1988) (delineating subject matter jurisdiction of the Court of International Trade).

42. 28 U.S.C. §§ 1346, 1491 (1988).

United States, or for liquidated or unliquidated damages in cases not sounding in tort⁴³

Although generally placing single issue courts in article I, Congress has also created article III courts with narrow jurisdiction. In 1942, Congress created the Emergency Court of Appeals of the United States⁴⁴ and in 1971 the Temporary Emergency Court of Appeals of the United States (TECA).⁴⁵ These article III courts heard appeals in cases arising out of wage and price regulations.⁴⁶ Congress created the TECA under article III in order to use sitting and senior article III judges from other courts to meet a temporary need.

As another example, in 1910, Congress enacted the Mann-Elkins Act which established the Commerce Court as an article III court. Congress gave this court exclusive jurisdiction to review decisions of the Interstate Commerce Commission. The court lasted only three years due to Congressional fear that the court was biased in favor of one class of litigants—the railroads.⁴⁷

In 1988, Congress returned to its basic pattern of constituting specialized courts under article I. Congress created the Court of Veterans Appeals to adjudicate claims for benefits under laws administered by the Veterans Administration.⁴⁸ In sum, Congress has generally created single issue courts under its article I authority. This technique preserves options for Congress in the event a single issue court falls prey to dangers of specialization.⁴⁹

IV. THE FEDERAL CIRCUIT—IN PRACTICE

In the Court of Appeals for the Federal Circuit, Congress did not intend to create a specialized court. The Act itself provides for a wide diversity of cases and subject matter.⁵⁰ In addition, actual practice reveals that the Federal Circuit has not become the specialized court of limited jurisdiction its detractors feared. Rather, the court hears cases in virtually every area permitted by its jurisdictional statute and shows no overt favoritism in patent disputes.

43. 28 U.S.C. § 1346(a)(2) (1988).

44. Emergency Price Control Act of 1942, 56 Stat. 32, *codified at* 50 U.S.C.A. App. former § 901 (Jan. 30, 1942), *repealed by* Price Control Extension Act of 1946, ch. 671, § 1, 60 Stat. 663, 664.

45. Economic Stabilization Act of 1970, Pub. L. No. 91-379, 84 Stat. 799 (Dec. 17, 1970).

46. See Jordan, *Specialized Courts: A Choice?*, 76 Nw. U.L. Rev. 745, 759 (1981).

47. *Id.* at 763.

48. Veterans' Judicial Review Act of 1988, Pub. L. No. 100-687, 102 Stat. 4113 (codified as amended at 38 U.S.C. §§ 4051-61 (1988)).

49. Article III judges are appointed for life. When the Commerce Court was disbanded, its judges were transferred to other article III courts.

50. See *supra* note 27.

Statistics show that a wide variety of cases, coextensive with its jurisdiction, come to this court. In the past four years alone, the Federal Circuit has entertained appeals from the following tribunals: United States District Courts, Boards of Contract Appeals, Court of International Trade, Claims Court, Secretary of Commerce, Court of Veterans Appeals, Department of Veterans' Affairs, International Trade Commission, Merit Systems Protection Board, and Patent and Trademark Office (PTO). No single type of case has dominated the court's docket.

A study performed in 1989 on the patent cases in the Federal Circuit shows as well that no particular class of litigant has an advantage.⁵¹ In a thirty-four-month period ending in October 1989, the Federal Circuit upheld the validity of patents from district court appeals seventy-one times and held patents invalid fifty-six times. The court held in favor of the patentee in infringement suits eighty-seven times, and against the patentee fifty-six times during that same period. Appeals from the PTO Board of Patent Appeals and Interferences resulted in the invalidation of 107 patents and the validation of twenty-five patents. Taken together, these data equate to holding for the patentee thirty-six percent of the time, and against the patentee sixty-four percent of the time.⁵² Opponents of the Federal Circuit's creation contended that the court might become biased in favor of patent protection, as the disbanded Commerce Court favored railroads. The cited data, however, hardly reflect a predisposition in the court's patent decisions.

Further, since this court's creation, Congress has acknowledged the non-specialized nature of this court's jurisdiction by, at least on one occasion, expanding its original jurisdiction. Congress amended 28 U.S.C. § 1346 (the Tucker Act) in 1964 to give United States District Courts concurrent jurisdiction with the Court of Claims for claims against the government under \$10,000 (Little Tucker Act).⁵³ In 1988, Congress amended 28 U.S.C. § 1295 to give the Federal Circuit exclusive jurisdiction over all non-tax Little Tucker Act claims coming from district courts.⁵⁴ Thus, the Federal Circuit obtained exclusive jurisdiction over all Little Tucker Act claims whether filed in district courts or in the Claims Court.

51. Special Project, *Published and Unpublished Federal Circuit Patent Decisions: A Comparison*, 30 J. OF L. & TECHNOLOGY 233 (1990).

52. *Id.*

53. 28 U.S.C. § 1346(a)(2) (1988).

54. 28 U.S.C. § 1295 (1988).

CONCLUSION

The traditional view of specialized courts connotes "possessing jurisdiction in but a single area of the law."⁵⁵ Congress has usually created specialty courts under its article I Powers. By creating the Federal Circuit under article III, however, Congress distinguished it from courts with specialized jurisdiction. While the Federal Circuit's detractors acknowledged that the court's jurisdiction would be more broad than a single subject area, many still feared that patent cases would dominate its docket. However, Congress appropriately addressed the concerns of specialization by giving the new circuit very broad subject matter jurisdiction. The Federal Circuit has avoided the entanglements and strictures of a specialized court. The diversity of articles and viewpoints appearing in this issue of *The American University Law Review* testifies of the non-specialized nature and independence of the Federal Circuit.

55. Dreyfuss, *The Federal Circuit: A Case Study in Specialized Courts*, 64 N.Y.U. L. Rev. 1, 4 (1989) (asserting Federal Circuit's jurisdiction is broader than that of traditional notions of specialized courts).